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TRANSMITTAL FORM	Application Number	09/383,094	
	Filing Date	August 25, 1999	
	First Named Inventor	Nemo Semret et al.	
	Art Unit	2166	
	Examiner Name	S. Rimell	
(to be used for all correspondence after initial filing)		Attorney Docket Number	A32159 - 070050.0945
Total Number of Pages in This Submission			

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☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 0

Complete if Known

Application Number	09/383,094
Filing Date	August 25, 1999
First Named Inventor	Nemo Semret et al.
Examiner Name	S. Rimell
Art Unit	2166
Attorney Docket No.	A32159 - 070050.0945

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

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02-4377

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1. BASIC FILING FEE

Large Entity Fee Code	Small Entity Fee Code	Fee Description	Fee Paid
1001	2001	Utility filing fee	
1002	2002	Design filing fee	
1003	2003	Plant filing fee	
1004	2004	Reissue filing fee	
1005	2005	Provisional filing fee	
SUBTOTAL (1)			(\$) 0

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

	Extra Claims	Fee from below	Fee Paid
Total Claims	-20 =	X	=0
Independent Claims	-3 =	X	=0
Multiple Dependent		X	=0

Large Entity Fee Code	Small Entity Fee Code	Fee Description
1202	2202	Claims in excess of 20
1201	2201	Independent claims in excess of 3
1203	2203	Multiple dependent claim, if not paid
1204	2204	** Reissue independent claims over original patent
1205	2205	** Reissue claims in excess of 20 and over original patent

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FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code	Fee Code	Fee Description	Fee Paid
1051	2051	Surcharge - late filing fee or oath	
1052	2052	Surcharge - late provisional filing fee or cover sheet	
1053	1053	Non-English specification	
1812	1812	For filing a request for ex parte reexamination	
1804	1804	Requesting publication of SIR prior to Examiner action	
1805	1805	Requesting publication of SIR after Examiner action	
1251	2251	Extension for reply within first month	
1252	2252	Extension for reply within second month	
1253	2253	Extension for reply within third month	
1254	2254	Extension for reply within fourth month	
1255	2255	Extension for reply within fifth month	
1401	2401	Notice of Appeal	
1402	2402	Filing a brief in support of an appeal	
1403	2403	Request for oral hearing	
1451	1451	Petition to institute a public use proceeding	
1452	2452	Petition to revive - unavoidable	
1453	2453	Petition to revive - unintentional	
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1807	1807	Processing fee under 37 CFR 1.17(q)	
1806	1806	Submission of Information Disclosure Stmt	
8021	8021	Recording each patent assignment per property (times number of properties)	
1809	2809	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	2810	For each additional invention to be examined (37 CFR 1.129(b))	
1801	2801	Request for Continued Examination (RCE)	
1802	1802	Request for expedited examination of a design application	

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SUBMITTED BY

(Complete if applicable)

Name (Print/Type)	Paul D. Ackerman	Registration No. (Attorney/Agent)	39,891	Telephone	212 408-2585
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

On Appeal to the Board of
Appeals and Interferences

Appellant(s) :	Nemo Semret et al.	Examiner:	S. Rimell
Serial No. :	09/383,094	Art Unit:	2166
Filed :	August 25, 1999		
For :	SYSTEM AND METHOD FOR ALLOCATING RESOURCES USING SPOT MARKET AND DERIVATIVE MARKET TECHNIQUES		

BRIEF ON APPEAL

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Paul D. Ackerman

Attorney Name

39,891

Registration No.

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June 2, 2005

Date of Signature

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

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Appellant(s) :	Nemo Semret et al.	Examiner:	S. Rimell
Serial No. :	09/383,094	Art Unit:	2166
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BRIEF ON APPEAL

This brief is filed in response to a Notification of Non-Compliant Appeal Brief dated May 17, 2005.

On December 9, 2004, Appellant filed a Notice of Appeal in the above-identified patent application from the final rejection of claims 8-12 memorialized in the Final Official Action issued by the U.S. Patent and Trademark Office (the “PTO”) on June 9, 2004.

In accordance with 37 C.F.R. § 1.192(a), one copy of this brief is submitted in support of the appeal of the final rejection of pending claims 8-12. For the reasons set forth below, the final rejection of pending claims 8-12 should be reversed.

I. REAL PARTY IN INTEREST

The real party in interest is The Trustees of Columbia University in the City of New York (“Columbia”). Columbia is the assignee of the entire right, title, and interest in the present application by way of Assignment dated July 10, 1999 recorded on August 25, 1999 at Reel 010202 and Frame 0490.

II. RELATED APPEALS AND INTERFERENCES

Appellant and the Appellants’ legal representatives are unaware of any appeals or interferences related to the present application which will directly affect or be directly affected by or have a bearing on the Board’s decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 8-12 stand finally rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,345,090 to Walker et al., entitled *Conditional Purchase Offer Management System for Telephone Calls* (“Walker”). Applicants hereby appeal the rejection of these claims.

A copy of all of the pending claims is attached hereto in the Appendix.

IV. STATUS OF AMENDMENTS

Subsequent to the issuance of the Final Official Action dated June 9, 2004, no further amendments to the claims have been filed by Appellant.

V. SUMMARY OF INVENTION

The invention described in the above-identified application is directed to methods and systems for allocating modem lines to subscribers based on spot market and derivative market models. (Applicants' Specification, page 1, lines 5-8). As defined by independent claim 8, the only independent claim on appeal, a network computer server system is provided for controlling a plurality of network access lines to provide subscriber access to a computer network. (Fig. 5, generally; specification pg. 6, line 13 through pg. 7, line 14)¹. The server system has an access line interface for partitioning the plurality of network access lines as first stage lines and second stage lines. (See Figs. 1 and 2). A processor (Fig. 5, 514) is coupled to the access line interface (516) and coupled to computer readable media encoded with program instructions (512). The processor is programmed to perform the steps of:

determining an available number of second stage lines (Fig. 3, step 305);
 queuing arriving subscribers bidding for network access in the first stage lines (step 300) and periodically admitting at least a portion of the arriving subscribers into the second stage lines based on respective bid amounts and the availability of second stage lines (Steps 315, 325; specification pg. 11, lines 2-8);

determining a spot price of the resource based on at least one arrival subscriber not admitted (step 330; specification pg. 11, 14-21);

determining a reservation fee for secured access to the network for the admitted subscribers to secure future network access at a given bid price (step 345; specification pg. 12, lines 1-8);

¹ References to the specification and figures are intended to be illustrative of examples rather than limiting the claimed invention. Such references should not be construed as limiting the claims to the preferred embodiments described in the application.

determining whether a subscriber has accepted the reservation fee and controlling the access line interface to operatively couple that subscriber to the network via a second stage line as a reserved subscriber (step 350; specification pg. 12, lines 7-9);

determining whether a subscriber has rejected the reservation fee (step 340) and controlling the access line interface to operatively coupled that subscriber to the network via a second stage line as an unreserved subscriber (Fig. 4; specification, pg. 12, lines 9-10);

controlling the access line interface to disconnect from the network non-reserved subscribers whose bid prices are below the spot price (Fig. 2, step 202; Fig. 4; specification pg. 10, lines 19-22, pg. 13, lines 4-8); and

activating a reservation of reserved subscribers whose bid price is below the spot price, and controlling the access line interface to maintain network access for the reserved subscriber for a duration of the reservation (Fig. 4, steps 405-420; specification pg. 13, lines 8-19).

The computer storage device (Fig. 5, 512) can also store a data base of subscriber account data.

Subscribers seeking access to the system provide an initial bid. (*Id.* at 8, lines 18-19). Subscribers are granted access based on their respective bid amounts and line availability. (*Id.* at 10, lines 15-16). If there is sufficient capacity to accommodate all arrivals, then all are admitted and the spot price, or market price, is set to a minimum price. (*Id.* at 11, lines 9-11). If there are more arrivals than available capacity, then the bids are sorted in descending order and capacity is filled with the highest bids. (*Id.*, lines 11-15). After capacity is filled, the remaining subscribers are dropped, and the spot price is set to the highest dropped price. (*Id.*, line 16).

Thus, the system determines the spot price for accessing the network lines based on bid price and line availability, and recalculates a spot price at regular intervals. (*Id.*, lines 10-20).

After access is granted to a portion of subscribers, the system calculates a reservation fee for securing future access to the system. (*Id.* at 12, lines 4-7). The system offers admitted subscribers an opportunity to reserve future access at the current market price, known as a reservation, in exchange for paying a reservation fee. (*Id.*, lines 8-10). This reservation, or “hold option,” is analogous to an option to buy future resources at a predetermined price. (*Id.* at 9, lines 9-10). Subscribers who purchase the option are known as reserved subscribers, whereas subscribers who do not purchase the option are unreserved subscribers. (*Id.* at 12, lines 20-21).

When the spot price exceeds the bid price of an unreserved connected subscriber, the subscriber is disconnected from the system. (*Id.* at 13, lines 1-2). Reserved subscribers, however, can maintain access to the system for the duration of their reservation even if the spot price exceeds the subscriber’s bid price. (*Id.*, lines 2-4). A subscriber’s reservation is thus activated when the spot price exceeds the reserved subscriber’s bid price.

VI. ARGUMENTS

1. Rejection Under 35 U.S.C. § 102(e)

a. Relevant Case Law and Procedure(s)

In the Office Action dated June 9, 2004, Claims 8-12 were rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,345,090 to Walker et al., entitled *Conditional Purchase Offer Management System for Telephone Calls* (“Walker”). Applicants respectfully traverse this rejection.

To establish an anticipation rejection, the cited reference must teach every element of the claimed invention. 35 U.S.C. § 102(e) states, in pertinent part, that “[a] person shall be entitled to a patent unless the invention was described . . . by another filed in the United States before the invention by the applicant for patent.” A patent claim is thus anticipated under Section 102 if, among other things, “identity of invention” is shown. *Minnesota Mining and Manufacturing Co. v. Johnson & Johnson Orthopedics, Inc.*, 976 F.2d 1559, 1565 (Fed. Cir. 1985). In finding identity of invention, one “must show that each element of the claim in issue is found . . . in a single prior art reference.” *Id.* The Federal Circuit has held that, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Moreover, “[a] prior art publication cannot be modified by the knowledge of those skilled in the art for purposes of anticipation.” *In re Saunders*, 444 F.2d 599, 602-03, 170 U.S.P.Q. 213 (C.C.P.A. 1971).

b. Claims 8-12 are Patentable Over Walker

Appellant respectfully asserts that Walker fails to disclose or suggest, either expressly or inherently, Appellant’s invention as recited in claims 8-12. Claim 8 recites a

network computer server system for controlling a plurality of network access lines to provide subscriber access to a computer network. This includes, *inter alia*:

queuing arriving subscribers bidding for network access in the first stage lines and periodically admitting at least a portion of the arriving subscribers into the second stage lines based on respective bid amounts and the availability of second stage lines;

determining a spot price of the resource based on at least one arrival subscriber not admitted;

determining a reservation fee for secured access to the network for the admitted subscribers to secure future network access at a given bid price;

determining whether a subscriber has accepted the reservation fee and controlling the access line interface to operatively couple that subscriber to the network via a second stage line as a reserved subscriber;

determining whether a subscriber has rejected the reservation fee and controlling the access line interface to operatively couple that subscriber to the network via a second stage line as an unreserved subscriber;

controlling the access line interface to disconnect from the network non-reserved subscribers whose bid prices are below the spot price; and

activating a reservation of reserved subscribers whose bid price is below the spot price, and controlling the access line interface to maintain network access for the reserved subscriber for a duration of the reservation.

The present claims are directed to systems for providing subscribers the *right to*

purchase access to the system at a *future time*, for up to a specified duration and at the subscriber's bid price. This 'futures contract' is referred to in the present application as a *reservation*, and is available to subscribers through the payment of a reservation fee. The reservation held by the subscriber, in turn, gives the subscriber the opportunity to purchase access to the system at a later point in time, but at the current market price. Thus, the reservation

fee is the price of the opportunity only, *i.e.*, future access, and is paid in addition to the spot price to access the system.

In contrast, the cited Walker reference refers to a system for receiving and processing conditional purchase offers for telephone calls. [Walker, col. 3, lines 8-10]. The system determines whether a long distance carrier is willing to complete the telephone call in accordance with restrictions defined by the calling party. [col. 3, lines 12-16]. The calling party's conditions may include the telephone number, the maximum price, a preferred carrier, and any time limitation such as a particular time of day, or a minimum call duration. [col. 3, lines 23-26]. The system disclosed in Walker provides offers to long distance carriers to complete and pay for a call, and determines if those offers are accepted. [col. 3, lines 62-65]. Thus, Walker processes a *single* contract between the caller and the long distance provider for a *connection* based on the conditions offered by the calling party. [col. 3, lines 65 - col. 4, line 2]. Walker does not disclose a *separate* contract that provides subscribers with the *right to purchase* access in the *future*, as claimed in the present application.

The Examiner maintains that reservation fees are recited in Fig. 7 of Walker, and are equivalent to the prices that are offered by the customers. [See Final Office Action, 6/9/2004, p.5]. Fig. 7 of Walker, however, does not disclose reservation fees. The prices shown in Fig. 7 are "the price[s] the calling party is willing to pay *for the call*." [Walker, col. 10, lines 13-14 (emphasis added)]. In other words, a caller's bid price for establishing a connection. If the carrier accepts the caller's offer, then the carrier completes the connection, and the caller is obligated to pay for the call *only*. [See col. 11, lines-45-47]. A reservation fee, as disclosed in the present application, is paid *in addition* to the bid price because it is a contract separate from the contract to establish a connection. The reservation fee reserves a right to purchase a call *in*

the future, and is not the bid price for the call itself. Because Walker discloses only one type of offer - the offer to pay for the call itself - Walker does not teach creating a reservation through the use of a reservation fee, as recited in claim 8 of the present application.

Since Walker fails to disclose the calculation or use of a reservation fee, as set forth in claim 8 of the present application, Walker cannot read on at least four elements recited in Claim 8. For example, Walker does not (1) “[determine] a reservation fee,” (2) “[determine] whether a subscriber has accepted the reservation fee,” (3) “[determine] whether a subscriber has rejected the reservation fee,” or (4) “[activate] a reservation of reserved subscribers,” each of which are recited in claim 8 of the present application. Accordingly, Walker cannot anticipate Claim 8 or the claims which depend therefrom.

Further, the present application uses a spot price to disconnect non-reserved subscribers, or to maintain connection to reserved subscribers, whose bid price falls below the spot price. For example, the system may accept all bids if the system has sufficient capacity, and thereby connect all subscribers while setting the spot price to a minimum amount. When the demand exceeds line availability, the spot price is recalculated based on the highest bid price of subscriber’s who were denied access. The system compares the newly calculated spot price to both reserved and unreserved connected subscribers, allowing connected subscribers who have a reservation to remain connected, but disconnecting unreserved connected subscribers, if the spot price exceeds their bid price.

The Examiner maintains that in Walker, subscribers are activated by having their offer accepted and dropped by having their offer rejected. [See Final Office Action, 6/9/2004, p.4]. Walker, however, does not teach disconnecting a non-reserved subscriber who is *already* connected once the spot price exceeds the subscriber’s bid price. In Fig. 8b of Walker, carriers

consider offers presented by potential callers before a call is connected. [See Walker, col. 10, lines 57-60]. If the terms of the offer are rejected, the program is *terminated*, and does not allow the subscriber to establish an initial connection. [See col. 10, lines 63-65 (emphasis added)]. Fig. 9b of Walker further demonstrates that a caller is not connected while the carrier considers the caller's offer. The caller is instructed to "wait for a response" from the carrier. [See col. 11, lines 39-43]. If the offer is rejected then the program terminates, and if the offer is accepted then the call is connected. [col. 10, line 57-65]. Walker does not teach dropping a subscriber by having his offer rejected, because by rejecting the caller's offer, the caller is never allowed to establish an initial connection. Walker, therefore, does not teach using a spot price for comparative purposes to *disconnect* unreserved subscribers who are *already* connected, or to activate a reservation of a reserved subscriber, as claimed in the present application.

Because Walker does not disclose each and every element of the claimed patent application, *i.e.*, a reservation, a reservation fee, and using a spot price for comparative purposes to disconnect an unreserved subscriber, it cannot be used as the basis for anticipation under 35 U.S.C. § 102. As such, Applicant respectfully requests reversal of the Examiner's rejections.

IX. CONCLUSION

For at least the reasons indicated above, Appellant respectfully submits that the invention recited in the claims of the present application, as discussed above, is not anticipated by prior art. Reversal of the Examiner's rejections of the claims is therefore respectfully requested.

Respectfully submitted,

Dated: June 2, 2005

By:



Paul D. Ackerman
Patent Office Reg. No. 39,891

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APPENDIX

Claims as currently pending:

8. A network computer server system for controlling a plurality of network access lines to provide subscriber access to a computer network, the server system comprising:

an access line interface for partitioning the plurality of network access lines as first stage lines and second stage lines:

a processor operatively coupled to the access line interface, the processor being operatively coupled to computer readable media encoded with instructions to perform the steps of:

determining an available number of second stage lines;

queuing arriving subscribers bidding for network access in the first stage lines and periodically admitting at least a portion of the arriving subscribers into the second stage lines based on respective bid amounts and the availability of second stage lines;

determining a spot price of the resource based on at least one arrival subscriber not admitted;

determining a reservation fee for secured access to the network for the admitted subscribers to secure future network access at a given bid price;

determining whether a subscriber has accepted the reservation fee and controlling the access line interface to operatively couple that subscriber to the network via a second stage line as a reserved subscriber;

determining whether a subscriber has rejected the reservation fee and controlling the access line interface to operatively coupled that subscriber to the network via a second stage line as an unreserved subscriber;

controlling the access line interface to disconnect from the network non-reserved subscribers whose bid prices are below the spot price; and

activating a reservation of reserved subscribers whose bid price is below the spot price, and controlling the access line interface to maintain network access for the reserved subscriber for a duration of the reservation; and

a memory device operatively coupled to the processor, the memory device for storing a data base of subscriber account data.

9. The network computer server system as defined by claim 8, wherein the processor calculates the reservation fee on the bid amount and a requested duration of the reservation.

10. The network computer server system as defined by claim 8, wherein the reservation fee is inversely proportional to the bid price and directly proportional to the requested duration of the reservation.

11. The network computer server system as defined by claim 8, wherein processor sets the spot price to the highest bid price of the at least one arrival subscriber not admitted.

12. The network computer server system as defined by claim 8, wherein the processor calculates the available number of lines in the second stage as a total number of lines in the second stage less the number of reserved subscribers admitted in the second stage.